

THE
ANTIQUITY & ORIGINAL
Of the Court of
CHANCERY,
And AUTHORITY of the
LORD CHANCELLOR
OF
ENGLAND



BEING
A Branch of Serjeant Snaggs
Reading, upon the 18 Chapter of *Magna Charta*, at the Middle Temple,
in *Leis*, 13 *Eliz*.

WITH
His Congratulatory Epistle, (by way of
Preface) to the Lord CHANCELLOR
Hutton, in 19 *Eliz*.

Major hereditas à Legibus, quam à parentibus. Cicero.

LONDON,
Printed for Henry Seile over against Saint
Dunstons Church in Fleetstreet, 1654.



To the Right Honourable the Lords Commissioners for Custody of the Great Seal of England.

My Lords,



That an eminent and a learn'd Professor of the Laws of England heretofore in Manuscript presented to an Honourable Predecessor of your Lordships at his first entrance to that high place, Be
A 2 pleased

The Epistle

pleased to give a Puisse
leave to present in print unto
your Lordships at your In-
vestiture. A small fragment,
I confess: yet such, I hope,
as will appear neither un-
worthy of your approbation,
nor improper for your Patro-
nage and Protection. The
subject-matter, as well of the
Authors Epistle, as of his
Readers observations, being
a little Map and Modell of
your Lordships great Office
and Jurisdiction, and rarely
to

Dedictory.

to be found in our printed
Authorities; which, perad-
venture, may be the Reason,
why that antient and excel-
lent Judicatory hath lately
met with such great Envy
and Opposition; Learning
having no other Enemy but
Ignorance, and most Men
being naturally inclin'd to
apprehend amisse of that
they comprehend not; Though
it will not be denied, but that
any Court of Iustice in
England may admit of

The Epistle, &c.

Regulation. My Lords,
I shall not say any thing for
the Piece, it speaks Reason,
and can best speak for it self.
I shall only crave your Ho-
nours pardon for this great
presumption of

Your Lordships
Most humbly
devoted,

T. L.

To

To the Right Honourable Sir Chri-
 stopher Hatton Knight, Lord
 Chancellor of England, Robert
 Snagg an Apprentice of the Com-
 mon Lawes of that Realm, wish-
 eth all increase of Grace, Mercy,
 and Peace, Honour, and Prosperi-
 ty in this World, and perfect Be-
 licity in the World to come.

When (Right Honou-
 rable) it came to my
 course to Read in the
 Middle Temple, after I had
 there continued a Puilne full
 20 years, and more, (for so they

are called till they Read) and then I was to become an Apprentice of the Common Law, and in my Reading to deliver to my Fellows of that House, such Notes as I had collected in the course of my Study, that I thought to be most profitable to be opened for the exercise and use of Law in our time; And when I had looked into some other mens Travels that had Read before me, and other Writers, and found many several Concepts, and sundry Incertainties touching the Commencement of our Law, and whence it came, and what it was; and I thought it as meet (as Tully

tea.

teacheth) that it should be un-
 derstood, *Quid est de quo disputetur,*
 as to enter into argument of par-
 ticular cases which were to be
 decided thereby : which is the
 manner of that exercise, well
 known to your Lordship, as one
 that entred by that Gate into the
 happy and honourable Course
 of life, that God of his great
 Goodness hath most graciously
 led you in, from Grace to Grace,
 and Honor to Honor, to the
 highest Honor and most ab-
 solute Office that is in *England*
 under her Majesty, who is im-
 mediate in all Dignity, Honor,
 and Authority under God in
 this Land. But when I had con-
 sidered

sidered, according to my capacity, of all the Reports that be in print of the practice of the Law, and of some other that I have, I could find no certainty of the Commencement of it, what it was, nor whence it came. For some said, it was the Custom of *Normandy* that the Conquerour brought in, and placed here; Some, that it came out of *Germany*, brought by those people that were called *Angli*, that came hither to inhabit, of who this Land took the name of *Anglia*, and the Law the name of *Lex Angliæ*, which favoured more of Reason, that is the ground of our Law; And some

some imagined one thing, and
 some another; But that great
 learned Judge Mr. Littleton, in
 his first Book satisfied me, that
 it could neither be the Law of
 Normandy, nor of any other
 Country in Germany, nor else-
 where, but peculiar to this Land;
 For he saith, That Tenant by the
 Courtesy of England is to hold the
 Land, if his Wife die, during his life,
 by the Law of England, & is called
 Tenant by the Courtesy of England,
 for this, that this is not used in
 any other Realm, but only in
 England; wherof I collected, that
 if the same Law had been in a-
 ny other Realm, that Tenure
 by the Law had likewise been
 there.

And

And I found in stories, that
 presently after the Conquest
 there were divers Insurrections
 not only of the people, that did
 rise without Reason, but of di-
 vers of the Nobility of the best
 sort, who endured Famine, (and
 that so far as they did eat the vi-
 lest vermin) yea, and the utter
 overthrow of their Houses and
 Posterity; And all their cause
 was, but to be restored to their
 ancient Laws & Liberties. And
 that civil dissention continued
 long for that cause, and the No-
 bility, without restitution of
 them, would not yield to their
 Kings, as men that shewed
 themselves to be made of the
 right

right *English* mould; ready to endure any pain and loss, rather than the loss of their native Laws & Liberties, and to subject themselves to the Will-government of their new Lords, and new Laws, that the Conqueror brought in, and the pleasures, and oftentimes the displeasures of their Kings, who did all, and took all, as pleased themselves, under pretence of their Prerogative: which Prerogative rightly used, and truly understood, is a thing most honourable to the Crown, and not prejudicial to the Law, nor hurtful to the Realm, nor any Subjects lawful Interest, or Liberty.

But

But that Will-government in
 the Kings, discontentment in
 the Nobility, & continual Wars
 within the Realm, continued
 until K. Henry the 3. who (being
 by that time by divers descents
 purged and purified by our Eng-
 lish Air, and by Education after
 the order of our Nation, and so
 become English, and of a better
 nature than the Aliens, and their
 offspring) of love to his subjects,
 was content to allow English-
 men their English Laws. And
 thereupon the 10th day of Febr.
 in the 9th year of his Reign,
 granted under his great Seal the
 Great Charter, thereby to restore
 the Laws of the Land, the Li-
 berties

erties of the Subjects, and to li-
mit his Prerogatives, so, as they
should be prejudicial to neither.

But after, kindled (as it seem-
ed) by the heat of his youth,
he continued not in that good
mind, but infringed the same
Charter, and chose his Will for
his direction, (as others his late
Predecessors had don) and left
that Law of the Land, which
he had granted to be Restored
and Revived. Whereupon 40
years wars after that followed
between him and his Barons,
(as they be generally Termed,
though the greatest Earls, & o-
thers of the chief of the Nobili-
ty, were Partners therein) which

were

were never fully appeased, until
the Parliament was holden at
Marlebridge about the 52 year of
his Reign, when and where
that Charter was enacted in that
Parliament, and thereby the an-
tient Laws and Liberties revi-
ved and restored, which Charter
so enacted, thence hath been
by all Kings & Queens solemn-
ly sworn at their Coronations
to be kept, and so hath been sa-
credly Observed to this day, un-
less some Forgetfulness in some
Kings, and Ignorance in some
Officers, hath infringed the
same. But now, by Gods blef-
sing plentifully powred upon
us, it is in full Use, to the great
Com-

Comfort of all good Subjects;
and immortal fame of her most
Excellent Majesty.

And in the 28th Chapter of
that Charter and Act of Parlia-
ment, I find it set down in La-
tine, in excellent and significant
brief words, to this effect; That
no Freeman shall be dealt with either
in Life, Liberty, Lands, Liberties,
Estate or Goods; nor that the King
would send for any, nor proceed a-
gainst any, Nisi per legale judi-
cium parium suorum, aut per le-
gem terræ; And that the King
would not defer, deny, nor sell Ju-
stice, or Right to any; which is, as
it were, the sum of all the Char-
ter & Act, and the whole mark

Honour

B

that

that was shot at, to revive the
 ancient Laws, and restore the
 ancient Liberty and Liberties
 to the Subjects.

Wherein I noted, That, both
 how far the Prerogative should
 go, and what is Right and Ju-
 stice common to all, is referred
 to be decided *per legem terræ*;
 what therefore that *Lex terræ*
 was, which was so carefully
 sought, & dearly bought with
 so much Noble blood, which
 was then thereby revived, I
 thought if I could find, I had
 that I sought for.

And therefore I thought it best
 to begin with such Reporters,
 or Writers of our Law, as writ
 nearest

nearest the time of that Charter, and looked into Mr. Bracton; that wrote about 9 H. 3. the very time of the first granting of the Charter, who was one of the chief that were appointed (as it is delivered by Tradition) to find out again the ancient Lawes of the Land; when the King was pleased to put the same again into the force that they had lost by the Conquest. And in his Book in print, I find it thus written; *Cum autem foret in omnibus Regionibus utatur legibus, & iure scripto, sola Anglia usque in saecula suis iure non scripto, & consuetudine, in ea quidem ex non scripto, ius venit quod usque comprobavit.*

And after that, he saith in the
next Chapter these words, *Leges
Anglicanae fuerunt approbate
consensu utentium, & Sacramento
Regum confirmatae.* And Cap. 30
*Consuetudo more utentium approba-
ta vicem Legis obtinet, & consue-
tudinis non vilis est auctoritas.* R. 01

And he saith further, Lib. 1
Cap. 8. *in creating of that Law
which he calleth the Custom
of the Land, Ex eodem facit Re-
gem, attribuat igitur Rex Legi, quod
Lex attribuit ei, id est, dominatio-
nem & potestatem; nam ubi domi-
natur voluntas, & non Lex, ibi non
est Rex.* Whereof may be aply
collected, that before this Law
was, there was no King here in
this

this Land; for if the Law of the Land made the King, there was none before it; But Kings we find by all Stories to be of a great antiquity here in this Land, and so by consequence the Law must.

And then looking for that matter in the Reports of the Law, I found a Book Case, in 2 H. 4. fol. 18. That it was agreed by the Judges, that the Common Custom of the Realm was the Law of the Land; And in that point looking further, I found all Books of Law agree; which Judgment of the Judges from time after the Enacting of that Char-

ter, and the judgement of Mr
Bracton before at the time of
 the penning of the *Charter*, con-
 curring in one, satisfied me,
 That *Lex terra*, which is there
 set down, and thereby revived,
 and now holden by the great
Charter, whereto every King
 and Queen is sworn at the Co-
 ronation, was the antient Cu-
 stom of the Land, that all Peo-
 ple of several Nations that at se-
 veral times inhabited here li-
 ked best of, as fittest for this
 place, whereby the Kings lived
 in greatest Honor and Ease, and
 the People in greatest Quietnes
 and Freedom, wherfore there-
 to the Kings were content to
 bind

bind themselves, and the Subjects could abide no other. And so I drew that travel to this conclusion, That our Law is the antient Custom of the Country or Land, and of that Antiquity, that there is no Record nor Matter that can shew the Commencement thereof, nor any man can tell it, but it was before all memory of Man that remaineth in the world, consisting of Maxims, General Grounds, & Rules, received, approved & allowed as just, good, & necessary for the Governmēt of this Land, begun when this Land first became a Commonwealth under a King, and ever

fithence used, approved, and al-
 lowed, from time to time, time
 out of mind of Man, and by ex-
 perience found in all Ages to be
 fittest for the place, and to be
 necessary, honest and profitable
 both for the Prince and People,
 and being so found fit and con-
 tinued, it became a Custom to
 be observed of all that should
 inhabit, or remain here, and
 when it was lost by the Con-
 quest, it was again restored by
 Common consent of Parlia-
 ment, as was necessary it should
 be; for that the force it had by
 Custom and Usage was inter-
 rupted by the Conquest; So as
 the Custom of the Realm revi-
 ved

ved by Parliament, is the Law
of the Land, which is the *Genus*
to all; And the Parliament and
the Acts thereof, and the Prero-
gative of the Prince, and the
particular Customs of several
Counties, Cities, Boroughs, &
Manors, be all but *Species* of it:
For that General Custom of the
Realm, which is the Law of
the Land, authorizeth the Par-
liament, limiteth the Preroga-
tive, alloweth and disalloweth
of Private Customs, and what-
soever in *England* is to be allow-
ed, and not to be allowed, as
they are consonant or dissonant
to the reason thereof.

But when I had found out
this

this by Reading, then looking
 into the course of Practice, I
 found the Lord Chancellor sit-
 ting highest in *Westminster-Hall*,
 and had most to do, & bare the
 greatest rule; and yet gave his
 judgement (as it seem'd to me)
 as it pleased himself, whatsoe-
 ver the Law of the Land re-
 quired in the case: And seeing
 Men of great Honor, Learning,
 & Integrity sit in that place, and
 so judge, I was in a maze, not
 finding at the first how it could
 stand with the *Great Charter*,
 that referred all judgement *ad*
Legem terræ, and how any thing
 different from that Law could
 be allowable in the Land, sith
 the

the Kings were all sworn to maintain the *Charter* that restored the Law, and his Lordship and all the Judges were placed by the King.

But when I looked further, and perused it well, I found, that the Custom of the Land, which is that *Lex terre*, allowed of that Authority also, as of the rest, and that it was also a *Species* of that *General*, the Law of the Land, which was the antient Custom of the Realm; And that it was of necessity to be in that sort: For that the Common Law, Custom of the Realm, or Law of the Land, (term it as they list) standing of General Grounds,

Grounds, Rules, and Maxims,
 it was impossible but some par-
 ticular Cases must fall out, that
 either the General Rule where-
 on it lighteth shou'd be too
 hard for it, or too short to reach
 it; And therefore was it of ne-
 cessity (to the end that all Cases
 might be judged according to
 Right and Equity,) to have one
 under the Prince, above the
 rest, to have such an Authority
 that might judge *secundum æ-*
quum, & bonum, & sanam consci-
entiam, in these cases, and to mi-
 tigate where the Rule of Law
 would light too hard, and to
 supply where it came too short,
 and to the end that he might
 have

have the sending forth of Commissions to authorise Judges, & of Precepts from the Prince to produce them to judgment that were to be sued, And to be of special Trust with the King for keeping his *Great Seal*, & ordering thereof, & in such other things as appertains to that office.

Wherefore entering into consideration thereof, I found that Office also to be limited by the Law, and created thereby, and therefore I gather'd divers Notes concerning the same, to Answer such Objections as might in that respect be objected against that *Charter* and *Statute*, and the Law of the Land, which lying
by

by me when your Lordship
 was placed in that great Office,
 whom, I profess, I ever affected
 from my first coming to the
 Temple more than others (though
 then I knew, and was known
 of many of excellent Gifts and
 Natures,) And after your Honor
 was called to the Court by her
 Majesty, I coming sometimes to
 you from my old good Lord, &
 dear Friend Sir *Edward Saunders*,
 late L. Chief Baron, I found you
 most gracious and favourable
 unto me, and now lately recei-
 ved such honorable usage from
 you, as I could not have desired;
 when some of good and hono-
 rable Nature, & excellent good
 Dis-

Disposition dealt hardly with me, (as I thought) not affording me a good word, for a dutiful heart ever born them, and some hard pains performed for the; (which God, for some offence committed by me, but not against them, laid on me, & yet your Lordship, of whom I had never deserved any thing, nor shewed any Duty to, (except God revealed to you the Intention and Affection of my Heart) defended my poor credit (as I heard) to my great Comfort, and spake well of me.

Wherefore to shew my self thankfull, (for an ungratefull Man I have ever hated as a De-

vil,

vel, and loathed as a Monster)
I bethought me how to present
something to your Honour, as
a token of my dutifull mind, &
heart tyed to you; But amongst
things of price, I could find no-
thing that was not too dear for
me to compass, or too mean for
you to receive, as a present, and
that to deal that way, was but
to pour water into the Sea, so
plentifully (God be blessed for
it) he hath blessed you with a-
bundance; And yet seeing your
Honour had so well used me, for
nothing, but of your honoura-
ble Nature, I gathered hope,
that you would accept some-
thing, (were it never so small)

in


in good part at my hands, whose
 heart, and what he hath, is ever
 at your Commandement; And
 taking example by the poor Gar-
 diners, that present flowers to the
 greatest Prinzes, that have no-
 thing in them but a small smell,
 and no profit, & yet are well ac-
 cepted of their gracious minds;
 I thought good to compose my
 Papers together that concerned
 the Authority & Exercise of your
 Lordships Office; and to present
 them unto you, which, though
 too simple to inform your Wis-
 dom of any understanding, yet at
 some vacant time may serve to
 recreate your self in reading; as
 the plainest things, & not the gra-
 vest matters, are meetest for that

M

C

pur-

purpose. But my good Lord,
 with these papers I present unto
 you my self, & my poor service to
 be altogether at your Comman-
 dement, with faithful promise,
 That if my life may hold one of
 your fingers fro hurt, I will lay it
 down to help it, or to do you any
 good; & while I live will speak
 well of you to men, as one that
 deserveth it of all & pray for you
 to God, that he may still bless you
 with increase of his excellent
 Graces, much Honor, & perfect
 assurance of everlasting joy, And
 that her Ma^{tie} and this Land may
 long enjoy you, for the mainte-
 nance of the Lawes and Liberties
 thereof, and the relief of the op-
 pressed Subjects.



Notes touching the Office and Authority of the Lord Chancellor of England; Collected out of a Reading made in the Middle Temple, in Lent, Anno Dom. 1570. upon the 28 Chap. of the Great Charter of England, granted under the Great Seal in the 9th year, and Enacted and made a Statute at Marlbridge, in 52 year of King Henry the Third.

When the Reader had found, That, by his Statute, No Man might be arrested, imprisoned, or dealt withall in his Person or Liberty, or put out

of his Freehold, Free Customs, or Li-
 berties; Nor that the King would
 send forth against any, nor proceed
 upon any, but by the lawful trial of
 their Peers, or the Law of the Land;
 And that the King would not sell, de-
 ferr, or deny Justice or Right to any;
 And that that Law of the Land was
 the Ancient custom of the Country,
 which hath continued ever sithence
 there was a King here, and that by it
 the King was made, and had his
 power and prebeminence; And that
 it was confirmed by the Oath of
 Kings before the Statute, and sworn
 to be observed by all the Kings sithence;
 And that all Judges are
 bound to try their doubts, and Judge
 their Causes accordingly, howsoever
 their

their private knowledge, or Conscience lea leth them; Then both by Practice, and by the Authority of Books, looking into the course of the proceedings in the Chancery, by the Lord Chancellor of *England*, from time to time, it seemed as though that Office had been besides the Law, erected out of the absolute Authority that the Conquerors claimed; and that it hath been continued from time to time against the Law, and the Provision of that *Charter* and Parliament, as it were by a Prerogative above the Law, for that he is not tyed to any Form of Trial of any point of Fact that falleth

leth out doubtfull before him,
 as other Judges be, but may ex-
 amine Witnesſes as he pleaſeth,
 and when he pleaſeth, to inform
 his Conſcience, & alſo examine
 the parties by Oath or other-
 wayes, and to proceed as it ſhall
 ſeem beſt to his Wiſdom, to bear
 out the Truth, as it ſeemeth
 good to him in his privat judg-
 ment; And that his Lordſhip
 may Order & Decree the Cauſe,
 as it ſeemeth to him to agree
 moſt with Equity and Conſci-
 ence, howloever the Law is in
 the Caſe; and to Imprison the
 party if he will not be ruled by
 him, and forbear the benefit of
 Law, in every thing that the
 Lord

Lord Chancellor thinketh to be
 Unconſonable: So as it ſeem-
 ed upon the firſt object, for that
 his Lordſhip is neither bound
 to the trial, nor the judgement,
 that the Statute appointeth to be
 obſerved (as it ſeemed) upon
 the Letter, that his Authority is
 above Law, or beſides Law, &
 ſo the Great Charter of England
 no further holden than it plea-
 ſeth the Lord Chancellor of Eng-
 land. Alſo it appeared by pra-
 ctice, That no Man hath Juris-
 diction to judge according to
 the Law, before he hath ſome
 Grant or Commiſſion from the
 King or Queen out of the Lord
 Chancellors Office, under the

Great Seal that is in his keeping: And also by course of the *Common-law* (saving some particular prescriptions in some particular Courts) the Judges cannot hold plea in any Cause, until his Lordship send them it by an *Original Writ* framed in the *Chancery*, returnable before the Judges by his Lordships appointment.

But when it was well considered, That the *Charter* and *Statute of Magna Charta* was, that none of these things should be done, but according to the *Law of the Land*; And that every King was sworn to observe it, and that the Lord
Chan-

Chancellor is appointed by the King to his Office; It was conceived, that the Law of the Land appointed these things to be thus done by his Lordship, for some necessary causes known to them that first invented the Law, and so that great Office, and the *Great Charter*, and the Law of the Land might all stand together.

Wherefore then was sought for, when that great Office of Chancery was erected, by whom; and for what cause; and it was found to be erected by the Institutors of the Common Law, as a Member thereof, of necessity to observe order
in

in making of Judges, direction
of Sutes, and to relieve and sup-
ply in those Cases ; where the
Judges by the general Grounds
and Rules of Law, could not
give competent Remedy by
Law, according to Conscience
and Equiry, as shall hereafter
be more plainly shewed ; And
so his Lordship, nor his Office,
no derogation to the Law of
the Land ; but his Office a
member, and he a Judge there-
of, without whom the Law
could not have the perfection,
order, and due honour that it
hath ; For the better perceiving
whereof, it was Noted,

First, that those (the Kings,
Nobles,

Nobles, and Commons, who
 soever, and whensoever they
 were) that Instituted the Law
 of the Land, did see that it was
 best to make it so, as it might
 stand of General Grounds and
 Rules, that might comprehend
 all particular Cases that should
 fall out, and to bind all that
 were in one Case, to one judg-
 ment, without respect of per-
 sons, or other Circumstances;
 or else the Law could not di-
 rect the Judges, how they
 should proceed in judgement:
 For if consideration of the per-
 son, or other circumstance,
 might have given a scope to the
 Judges, to judge by one Rule,
 one

one Case one way, and another another way, the Judge might have made of the Golden Rule of the Law, a Leaden Rule, to bend at his will, and so confusion would have followed, and infinite inconveniences; for avoiding whereof, they made the Rules to reach all persons alike, according to Justice, which regardeth the person of no Man in judgement.

Then, they did see, that many would be over-reached; for some were too simple, and would trust untrusty persons, and be circumvented, and were meet therefore to be holpen; Some would fall into the lash
of

of the Law ignorantly, and therefore not to be punished as those that offended of Malice; Many might craftily over-reach their Neighbours, by getting the better end of the staff; And some by strength bear them down, if by some extraordinary Authority the weaker were not upholden, and the simple provided for, and the subtil prevented. For in many Cases men might offend & wrong their Neighbours in subtil sort, and be wronged by hap, or simplicity, or ignorance, and yet the General Rule of the Law could not fully reach, or relieve them, that were so over-reached

reached or circumvented.

Wherefore the Institutors of the Law found it to be a thing of necessity, to tie the Judges to follow the Law in judgement in all Cases generally alike, as the Case required: and yet to constitute one Supreme Judge further trusted than the rest, that might have an Authority absolute and extraordinary, to supply and reform those particular Cases, that might happen as aforesaid, according to Equity and good Conscience, and to bind the parties not to follow Law, where by Law they might get more by subtil.

than Conscience would.

Here grew an Objection;
That it was a dishonour to the
Law to have these wants, by
this great Man to be thus sup-
plied; for that it shewd, that
the had not sufficiency and cer-
tainty in her Grounds and
Rules.

But this is nothing, For there
is no Law in any Nation;
but particular mischiefs have
grown upon it; nor ever any
Art or Science hath been so
exquisitely set down, but dis-
putable Questions have been
found in it. And that it cannot
be otherwise; one example
may serve. *Moses* that was

they might get more by
ty, or the others simplicity,
than

(42)

the Law-giver to Gods Peo-
ple, and delivered it him-
self by Inspiration, was at
the wall, we see, in his own
Books, in divers Cases that
happened, both in the Political
Law, who should inherit, and
the Ceremonial Law, touch-
ing the uncleanness that came
by touching a dead body, and
he was driven to refer it to God
to be decided, and could not
decide it himself by the general
Rule of the most perfect Law
that ever was given to any peo-
ple. Then if *Moses* this man
of God found some doubts that
he could not decide, in that
Law delivered by himself;
Good

(43)

Good Judges and learned may find some Cases, that by Law they can hardly find a good provision for, but leave it to such as God shall appoint to utter his Will by in Cases of Conscience, sith by Law they are not otherwise provided for.

Then it was Noted whereof his Lordship hath his name of *Dominus Cancellarius Anglie*, Lord Chancellor of *England*; wherein all agree, that he is called *Cancellarius*; à *Cancellando*. But what he may Cancell, whereby he had that honour, hath been doubted. Some have said, that he had authority *Cancellare iniquam Legem Com-*

D

munem;

munem, & judicare secundum Con-
scientiam. But that hath no rea-
 son, and was rejected; for it is
 absurd, that sith the Law hath
 made him a Judge of Law,
 and his Office a member of the
 Law, and made thereby, (as
 as shall be plainly proved) that
 the Law should give Authori-
 ty to deface or Cancell her self,
 or that his Honour should de-
 face that wherby he sitteth, and
 hath his Authority. And to that
 end was cited Mr. Bractons say-
 ing, *Lex facit Regem, attribuat igi-*
tur Rex Legi, quod Lex attribuit ei,
id est, dominationem & potestatem;
 And thereupon it was conclu-
 ded, *a fortiore*, If the King, that
 hath

hath an Authority by Prerogative above the Law in many cases , as to pardon and acquit by Mercy, where the Law of Justice condemneth, must attribute to the Law Dominion and Power: the Lord Chancellor, though he hath an Authority besides Law, and yet allowed by the Law, is to attribute Dominion and Power to the Law in all that he can, for that it made him an Officer in so high degree, and therefore he may not Cancell or deface it. Which point, that he is made by Law, and hath his Authority therby, is afterwards fully proved. And it is to be

D z

Noted,

Noted, That his Lordship by his Absolute power cannot stay the Course of Law, but onely bindeth the person not to follow the Law in any Unconscionable Course. This may serve to shew, that it was not said of Cancelling the Law; for in those Cases of Conscience it is found by experience, that the Law will take her course if the party call upon it, though the Lord Chancellor hath otherwise ordered the Cause.

But his Lordship hath his Name of Cancelling the Kings Letters, Patents, which is a thing of as great Honour to his

his Lordship and the Law, as
 th'other had been of Dishonor,
 and Disgrace to both; where-
 in it was Noted, That the Let-
 ters Patents of the Prince once
 passed; the *Great Seal*, do bind
 both his or her Majesty, their
 Heirs and Successors, and all
 Subjects, yea so far, as the King
 or Queen cannot call them in,
 if they find them unfit, nor any
 Subject can gainsay them, if
 they be not just. Yet by Law
 if Letters Patents be past the
Great Seal in deceit of the King
 or Queen, the Judges by the
 Law are to adjudge it undue,
 and not to bind the King or
 Queen in that respect, wherein

they were deceived; but yet they must leave it under Seal, and cannot deface it. But if any Letters Patents pass the *Great Seal*, injurious to any Subject, or prejudicial to the Law, the Lord Chancellor as a Judge of Law, (and not by his absolute Authority) by his Ordinary power, and by the course of the Common Law is to judge of it; which proveth that the Law, and not Prerogative giveth him that power. For he is to hold plea of it by course of Law, and to call the party interested in it by process of Law, and so proceed according to the Law, and repeal it
by

by Judgement, if it be found in Law to be injurious. And then the Lord Chancellor may Cancell it, and pull the Seal frō it, and deface it; which neither the King or Queen by Prerogative, nor any other Judge of Law, nor other Lord of *England* can do, but himself, who only hath that Authority: Wherefore, thereof he is called *Dominus Cancellarius Anglie*, as if it were said, that Lord that only hath Authority in *England* to Cancell the Letters Patents of the Kings, that bind both the King and the Subjects, if they be injurious to any Subject, or prejudicial to the Law.

In this part, there were Three things Noted; One, that hereof his Lordship took his Name. Another, that this was his highest Authority, for that none but he had the like in the Land. The third, that his Lordship hath it given him by the Law, and is in that respect a Judge of the Law, and proceedeth in course of Law, and not according to Conscience, and by his Absolute power, or extraordinary Authority; for he cannot judge thereof any otherwise, but by the Law of the Land.

3. Then was Noted, As all justice floweth from the King or Queen, as from the Fountain,

tain, and no Authority or Jurisdiction in *England* is lawfull, that is not drawn from thence; so is his Lordship and his Office, next under the King or Queen, to direct such Commissions and Grants as shall give Judicial authority to any judge according to the *Law*, which must pass under the *Great Seal*, or they be not sufficient. For example, There is no Judge made by Writ or Commission, but it cometh from thence, neither hath any Man power *re-nere placita*, but it must grow first by Grant from thence, except it be the petit Sutes, that belong to petit Courts, as
 Courts

Courts Baron, and County-Courts; whereof it is said by Law, *de minimis non curat Lex*, but the Law left them to the Lords at home, to order them for the Peoples ease; Yet in these Courts if any false Judgement be given, it cannot be redressed but by Writ out of the Chancery, to bring it before better Judges. But hereof was noted, That though he must direct out all Commissions, and Grants, before any can have Authority to judge according to the Law, that his Lordship doth that also by the Law of the Land; And the Commissions and Grants made by him are to be ad-

adjudged by the Law of the Land for their validity or invalidity; And therefore that his Lordship therein is a Judge and member of the Law to appoint and direct the rest in that behalf, and is to do it in that form, and to that effect that the Law hath prescribed him, which his Lordship may not alter; whereby it is apparent that he hath that Authority also by the Law of the Land.

4. Then was Noted, That by the Common Law, if any would complain of wrong, or sue for right, he was to come into the Chancery, and set down by one of the Clerks thereof,

thereof, a Brief of his matter
 that he would put in Sute, and
 that was by the Clerk to be set
 down in form in parchment,
 and a Precept written before it
 in the Kings or Queens Name,
 and that directed to the Sheriff
 of that Shire where the Plain-
 tiff allegeth the Defendant was
 to be best found, or the cause
 most aptly lay to be sued to
 Trial; which Precept Com-
 mandeth the Defendant or Te-
 nant to render right to the
 Plaintiff or Demandant, or ap-
 pear at the day prefixed in the
 Court appointed to him, to an-
 swer him to the Law, and that
 Brief enclosed in Wax sealed
 with

with the *Great Seal*, the L. Chancellor is to send out by the course of the Common Law before any Subject can be sued for any matter of weight, by the course of the Common Law. And that Writ is called in *Latine Breve*; wherein also was noted, a great regard that the Law had, that Men should not be lightly heard to complain of their Neighbours, nor any Subject drawn into Sutes, nor troubled, nor any Causes (but the petitiones aforesaid) should be brought to judgement, but by his Honours direction; so as Judges should not send for whom they would, nor listen

to

to all that complained, but to do Justice to those that were sent to them by the Kings Writ, directed by the Lord Chancellor of *England* to be Returned before them, as fit to be considered of, and meet to be drawn into Sure and Judgement. Though since by usage, divers Courts have obtained other proceedings, by other process, according to their Course, and not by Originals, and that is not derogatory either to the Law, or that great Office; for some have grown by Grant, by reason of the Kings Prerogative, which both the Law and the Chancery alloweth, and are to allow

allow of right, so it be not in derogation of their Authorities, and may stand with the Law of the Land. For the *Kings Bench* proceedeth by Bill, without Original, against such as be Prisoners to the *Mareschal* thereof, and that justly; for that no Law can prescribe the King a form to proceed in Iustice for those Causes that be before himself, but he may receive any complaint, without Writ, and proceed as it please him, so he observe the Law for Iustice & Iudgement, which is done there, as well as in the Common Pleas, where all come in by Original Writ; For though
it

it be not by like form for process, yet it is by the same form of pleading and judgement, & in matter & substance of Law all one. And in this part it is manifest, that this Authority also in the Lord Chancellor to direct out Original Writs, is by the Law of the Land given unto him, and his form prescribed to him by the Law how he should make them. And to that purpose there is a Book of Law left in the Chancery that the Chancery men are bound to follow, which is called *The Register*; And if the Writs be not made according to the form of Law thereby pre-

prescribed, the Judges will reject them, and judge the void; which is called in Law, abating of the Writ. So as it is apparent, that in this also his Lordship and his Office is by the Common Law, and are members of the Common Law, and that he doth it not by any other Authority above Law, or besides it.

5. Then was considered of his Lordships authority to judge, which appeareth in 9 E. 4. fol. 14. in a Book-case, to be of two sorts, or by two powers, viz. One according to the course of the Common Law, or Positive Law, which is there said

by

.E.

to

to be *Potentia ordinata*, which is in process, in pleading, and in judgement, according to the course of the Common Law of the Land; The other is said *Absoluta potentia*, which is in process according to the Law of Nature, to send for the party to Answer, and receive his Answer if he will make it, & then proceed to examine the truth of the matter, and if he will not answer, but be *Contumax*, yet his Honour is to proceed to the examination of the truth, and not to condemn him in the cause for his obstinacy, if it may appear that the matter be not good against him.

And

And there is noted this difference, which is apparent and common in practice, That where the proceeding is according to Ordinary power, mispleading on either part may marr his Matter, and the judgement must be according to the Law, howsoever the equity of the Case shall fall out : But if the proceeding be according to Absolute power, though the party misplead, if the Lord Chancellor shall perceive the matter to be good on his side, his Lordship is to judge for him for whom Equity serveth, be it the Plaintiff or Defendant, for that he is to judge as he shall

find the matter to be in Conscience good or bad, and not as he shall find the pleading to be formal and good, or vicious and evil, or as the Law will in the Case. As for example, in such actions as be brought in the Chancery before the L: Chancellor, as an *Audita querela* to avoid a Recognisance for Nonage, or other good Cause in Law; And in actions brought according to the course of the Law, either by any of the Court, or against any of them by reason of their Privilege, and in Vouchers upon Aid-prayer of the King, and such other, whatsoever actions are pur-

pursued there according to the
 course of the Law, his Lord-
 ship is not to regard what Con-
 science would in the Case, but
 is tyed to the strict course of
 Law, so as if the matter be a-
 gainst Conscience in his Lord-
 ships opinion, yet he is to ad-
 judge with him that the Law
 serveth for, yea if his matter ap-
 pear to be good, and his Coun-
 sel have lost it by pleading, his
 Lordship can not help it in
 judgement; nor if the Law be
 against him, though Equity &
 Conscience would seem for
 him. But on the other side, if
 the proceeding be by the Ab-
 solute power, howsoever the

party or his Counsel oversee, or
 set forth their matter, & what-
 soever the precise Rule of Law
 requireth, if his Lordship per-
 ceive by his Wisdom that the
 cause in Conscience is good on
 his side, his Lordship is to ad-
 judge with him; for that
 then judgement is to proceed
secundum Conscientiam & Verita-
tem, and not in *Forma Juris*.
 But in any Case that is there in
 form of Law, if it fall out that
 in Conscience it ought to be re-
 lieved, the party may put in a
 Bill, & follow it in that course,
 and then his Lordship may stay
 the course of Law.

6. Then was it enquired,
 Whe-

Whether his Lordship may take order in all causes which are against Conscience, or that the Law hath limited them also, and allowed of some to hold in that course, and some not? And it seemed, that Conscience whereby his Lordship is to judge, is not to be understood *simpliciter*, and to be *Simplex Conscientia*, but *Regulata Conscientia*, and therein to follow Order and Course accustomed; viz. to take order in such Cases as by the Course of the Court hath been ordered before-time, and in Causes of like Equity, or greater; wherefore oftentimes Presidents are sought for and

required, and for lack of Presidents, it hath been sought how cases in the like reason, or in *eodem respectu*, with that that is then in question, have been used, to prove that that Court may take cognizance of the Cause.

As for example, it is against Conscience, that a rich Father should suffer an honest Son to begg, & that a rich Son should suffer a good Father to want; yet his Lordship in those cases, cannot make the one to give away his goods to relieve the other, according to Conscience; But that, which that *Regulata Conscientia* relieveth, is not when one

one keepeth his own unconscionably: but when one seeketh an other mans Goods or Lands, or to trouble his person unconscionably; either by colour of Law, or extorted power, further or otherwise than in good Conscience it ought to be; then his Lordship proceeding according to the course of that Court, is in Conscience to relieve the party that is so dealt with, or his Lands or Goods so taken or sought, contrary to Conscience.

7. And it was thought, that if it be unconscionable that is done, if the Law in ordinary course may give a competent

re-

remedy, and the party sufficiently able to follow it, and that there be no defect in any circumstance, but that by the Law the party wronged may be relieved; that his Lordship ought not to deal in it, but refer it to the Law to be judged. But therein there is no certain Rule but his Lordships own Wisdom, and Opinion, to discern whether the Law can relieve it, or not, or that there be any defect or not; so as if his Lordship think there is cause to retain it, he may, or dismiss it if it please him, according to his own Conscience, which is in that behalf
to

to direct him, as God shall direct it.

8. And some cases there be that seem unconscionable, and yet the Law alloweth them for good and necessary, and never Lord Chancellor thought good to deal in them. As for example, That the Warranty of a Collateral Ancestor that never had any thing in the Land descended upon one that had right, should barr the right Owner from his Inheritance, for that he is Heir to him that made the Warranty, though he hath nothing for it. Or that a supposed Recovery in value in a Common

Re-

Recovery against a Cryer of the Court of *Common Pleas*, that is not worth a Groat, nor like ever to be able to make Recompence in value, should stand for a Recompence, and be a barr of a mans lawfull Inheritance, and to barr him that he can never demand it, seemeth in every Mans particular Conscience to be unconscionable; And yet the Law hath allowed of them, upon this General Rule of Law, Better to suffer a Mischief than an Inconvenience, and upon the regard that the Law hath to settle Possessions of Inheritance in certainty, by
such

such Instruments and Policies
as the Law hath allowed to
assure them by, of which kind
these be; wherefore the Law
hath not suffered them either
by Law, or in Conscience, at
any time to be violated or in-
fringed, for any respect, or in
any case.

9. And it was said, That
wheresoever an Act of Parla-
ment hath made any provision
for any unconscionable thing
that was not to be relieved
by the Common Law, if
the Lord Chancellor think in
his Conscience that the Parla-
ment hath not sufficiently re-
lieved the party, yet his Lord-
ship

ship is not to relieve him further than the Parliament hath done, as before the Act he might have done; for that so much is provided for, as the whole Three Estates thought meet, to whose judgement his Lordship is to yeeld. But if any go about to defraud any Act of Parliament, or not able to seek relief as the Statute appointeth, Then, as aforesaid, according to Conscience his Lordship is to deal therein, when and where, as God and his Conscience is to direct, and no other, nor other rule there can be for his direction in that behalf.

Here

Hereupon was it also concluded, That his Lordships Authorities Judicial, both by Ordinary power, and by Absolute power are limited by the Law of the Land; For in the Ordinary, he is tyed to the strict course of the Law, as other Judges be; and in the Absolute power, though not tyed to the course of the Law, yet he is to deal, *per Regulam Conscientiam*, and according to the course of the Court, and in such Cases, as in cases of Conscience and Equity likewise hath been relieved before time, but not in any Case that Law hath allowed
of

of for good and necessary, nor in any that any Parliament hath made provision for, unless for some circumstances the party can not have that which the true intent of the Law, or the Parliament allowed him, but by means of that Court; And many things that a good Conscience would will a man to doe in Charity to his Neighbour, his Lordship by his Conscience cannot compell him to do, by the course of that Court.

10. But in all that Discourse none could find how farr his Lordships Absolute power

went

went, nor within what limits
 certain it could be contained,
 nor by what means he might
 find out the truth; But that is
 without limitation referred to
 his own Gifts, and the Grace
 of God, that giveth Wisdom
 to find out the Truth, and Con-
 science to judge accordingly;
 sometime to find it out by the
 Light of Nature, as Solomon did,
 when no Testimony could be
 found in the world, yet he
 found by her bowels of com-
 passion the true mother of
 the Child. And sometime it
 is found out by one mean, and
 sometime by another. But
 God never faileth to give
 us a
 F
 wis-

wisdom and means to per-
 form those Offices and Cal-
 lings, that his Majesty placeth
 men in; so as they serve him
 in Fear, and walk before him
 with a good Conscience, and
 seek it in Humility, and with
 prayer at his hands, whose
 Will, which is Infinite, is the
 Rule of the Lord Chancellors
 Conscience, and therefore his
 Authority in that respect is in-
 finite, and not limited in cer-
 tainty.

Upon all these Notes
 the Reader concluded with
 this Note, That it is certain
 that his Lordships Office and
 Authority is by the Law of the
 Land

Land, and not derogatory
thereto, but was constituted
by the Law-makers to sup-
ply those things that the Judg-
es that be bound to the general
Rules could not relieve; but
in nothing to proceed to the
prejudice of the Law. And
to that end his Lordship was
made a Judge of the Law in
some Cases, and also a Judge
by Conscience, besides the ge-
neral Rule of Law in some o-
ther Cases; for that being a
Judge of the Law as well as
others, his Lordship is with
others to uphold the credit of
the Law, and that most of all
others; for that she gave him

greater Authority than any of
 then, and trusted him above
 all the rest, in that he tyed
 all the rest to follow strict
 Rules, and left him to rule by
 the Grace of God, and his
 own Conscience, and to ob-
 serve only the Equity, and not
 the strict Rules thereof.

Wherefore no man ought
 once to controule his Lord-
 ships judgement in any cause
 that he proceedeth in by his
 Absolute power, but is with
 reverence to yeeld unto it, for
 as much as every one by the
 Rule of Charity, and of the
 estimation that we ought to
 have of them that God hath

sub-

Substituted over us; is to judge
 the best; that is, that his Lord-
 ship hath proceeded in single-
 nels of heart, according to his
 Conscience, and the Director
 of a good Mans Conscience is
 the will of God, which is
 the perfect rule of Righteou-
 nesse, howsoever it seemeth to
 Man in his Wit or Judgement.
 Wherefore when his Lordship
 hath set down his judgement
 as God hath guided his Con-
 science in any case, where he is
 Judge by Conscience, though
 it differ from some other judge-
 ment given either by himself, or
 any other good Man that sat in
 his Seat, all men are bound to
 bind

think, that the case differed
in some circumstance that
they cannot see, or hath not
understood it; Or that God in
this case, according to his
good Will, which is subject
to no Rule, but it self, hath or-
dered this thus, and that so,
and each being according to
Gods good VVill, though dif-
ferent in our Understanding
the one from the other, both
to be Righteous and Just
Judgements, and are not to
be disliked, or disobeyed of
any.

12. But then was it doubt-
ed by some, whether his Lord-
ships Authority absolute might
bind

bind the great Men of the
 Land, viz. The Nobility as
 well as the mean Subjects?
 And the doubt rose upon this,
 For that their Honours are not
 to be Arrested by their Bo-
 dies for any cause between
 Them and any Subject, by
 the Law of the Land; and
 the proceſſe out of the Chan-
 cery is by Attachment of their
 Bodies, if they come not in
 upon a *Sub-pena* served, and
 the execution of that Court is
 Imprisonment, untill the par-
 ty will yield to obey the De-
 cree and Order thereof, and
 by the *Great Charter* no Free-
 man ought to be Imprisoned,
 not by

but

but by the Law of the Land.
 But that seemeth no cause,
 why the Order of the Lord
 Chancellor should not bind
 them; for by the Law of the
 Land, if the Peers commit a
 ny contempt to the Crown,
 they shal be taken by their
 Bodies as I other times. And
 Mr. Barton, Lib. Treas. up
 hath these words; A Regia
 Justitiorum Patrimoniorum
 lunt petronum, nisi ad Coronam
 Dignitatem Regiam; post eam
 Coronam Regis facere Justitiam
 & Judicium, & benigne Pacem
 & illud Coram separari non pos
 sumus. And what can be more
 near annexed to Justice, than
 when

when a poor Man complai-
neth to the chief Judgement
Seat; that he should have ju-
stice according to Conscience
and Equity, without respect
of persons, and that his Might
should not overcome the poor
Mans right; Therefore, when
it is found, and Ordered for
the poor Man, and his Right
in Conscience, and the great
Man thereby appointed and
Ordered, that he shall cease
his hard dealing with him,
and be content with it; Must
not that contempe needs be
Contra Coronam and *Dignitatem*
Regiam, seeing that Jurisdic-
tion cannot be separated from
them?

them: And then all Men agree,
 That for any contempt
 against the Crown their Ho-
 nours may be arrested and im-
 prisoned as well as any other
 Subjects. But in all these great Cases,
 neither the Reader, nor any his
 Associates took upon them to
 decide the Law, touching the
 Authorities aforesaid, nor to
 give any certain Rules for
 them, but dealt only for Lear-
 ning to open the points, and
 leave the judgement to the
 Judges, as the manner of
 that Exercise is to determine
 what the Law is. And tou-
 ching his Lordships Absolute

Authority in this whole Dis-
 course, they all, both the Rea-
 der and his Associates, submit-
 ted themselves to the judge-
 ment of the Lord Chancellor
 himself, for every thing apper-
 taining to his Lordships Office,
 for that God hath not limited
 how farr, nor wherein, he
 should go or deal, but guideth
 his Conscience in every case
 that shall come before him,
 by his Grace, to do that which
 shall be good, just, and equall
 before God and Men, so far
 as God shall direct him in that
 matter, for his own Glory,
 and the good, or punishment
 of the parties, according to his
 Good will;

But the last Note was
 this, That where every other
 Judge if he erreth in judge-
 ment, is subject to a Writ of
 Error, to have his judgement
 examined by other Judges a-
 bove him, and so reversed,
 and himself not to be repro-
 ved, if it be but error in judg-
 ment, and if he erre of falshood,
 then to be Fined, or punished
 by the Lords in the Star Cham-
 ber, and his false Action defa-
 ced. Yet the Lord Chancellor
 of England, if he erre in his
 judgement, which he giveth
 according to his Conscience,
 there is no Appeal to, any but
 to God to reform it: for he is

the only Judge of the Conscience of Man; and he only may condemn any for Error only in Conscience; and he only may direct Conscience into a better course, if Man erre therein; for every Man of his own Nature is subject therunto; and also for that in that respect, there is no Magistrate in *England* superiour to him; for only the King or Queen is superiour to him in Government, and they are not by the Law to distribute Justice themselves, but are the Superintendents over all others, immediate under God to appoint the to it, & to see it done by them, and charge them with it, and

to maintain them therein.

Thus escaping out of this Laborinth, they left it, as they found it, saving this doubt resolved, That his Lordships Authority and Office was created by the Law, and remains a principal Member thereof, and that so of necessity, as without it the Law could not be just and equal to all in every Case.

F I N I S.

